

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

August 4, 1994
AO-94-24

Nancy J. Luther, Director
Governor's Highway Safety Bureau
100 Cambridge Street - Room 2104
Boston, MA 02108

Re: Massachusetts Advocates for Traffic Safety

Dear Ms. Luther:

This letter is in response to your July 5, 1994 request for an advisory opinion regarding the proposal for funding submitted to the Governor's Highway Safety Bureau by the Massachusetts Advocates for Traffic Safety ("MATS").

You have provided this office with a copy of the proposal submitted by MATS. MATS "would like to develop a statewide speakers bureau known as '**Say Yes to Safety Belts**' to assist [the Governor's Highway Safety Bureau] in directly reaching the public. The principle focus of this campaign would be to garner health and medical professionals support and involvement to increase safety belt awareness and use among all Massachusetts residents." MATS has requested funding in the amount of \$10,000 which would pay for "train the trainer workshops, slide presentation development and reproduction, informational materials and safety belt incentive items."

Chapter 387 of the Acts of 1993 mandated the wearing of seat belts. MATS supported that legislation. The proponents of a ballot question which will be included in the November 1994 general election ballot (Question #2) seek repeal of that law. A "yes" vote on that ballot question would continue the new law passed by the Legislature requiring use of seat belts; a "no" vote would repeal the new seat belt law.

Your request raises two issues: (1) whether the Governor's Highway Safety Bureau can fund the MATS proposal; and (2) whether public employees may participate in the proposed speakers bureau.

1. Funding the MATS Proposal.

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55

in considering whether a municipality had authority to appropriate and expend funds to influence a ballot question. The court held that M.G.L. c. 55 was a comprehensive campaign finance statute and stated that chapter 55 bars such expenditures since it "demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Id., at 186-187. Although the facts in Anderson related to expenditures by a municipality, the court's analysis encompassed expenditures by the commonwealth and all of its subdivisions:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a "hands off" policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote. That determination avoids the possibility of a babel of municipal huckstering and reserves the financing of public debate for nongovernmental agencies and individuals.

Anderson, at 194-195. This office has issued an interpretative bulletin, IB-91-01, regarding the application of the campaign finance laws to the use of public resources in support of or opposition to ballot questions. A copy of IB-91-01 is enclosed for your reference.

Although MATS has stated that its "focus" would be to "increase safety belt awareness and use," to the extent the MATS program would also advocate a "yes" vote on the Question #2, a grant funding the program would not be consistent with the "hands off" policy articulated by the court in Anderson. Moreover, even if the speakers bureau did not actually advocate a "yes" vote, the name of the group may well lead the public to conclude that the group supports and advocates, through this program, such a vote. Since the MATS proposal is entitled "Say Yes to Safety Belts" and a "yes" vote on the referendum question relating to the repeal of c. 387 of the Acts of 1993 would be a vote in favor of continuing the law requiring the use of seat belts, it would be reasonable to conclude that the MATS effort, even if designed to increase "awareness and use" would also have the result of encouraging a "yes" vote on the ballot question.

Even if the name of the program were other than "Say Yes to Safety Belts," however, funding by a government agency of the program may still raise serious concerns under Anderson, at least to the extent the proposed speakers bureau begins operation prior to the November election. Since MATS was a sponsor of the legislation which might be repealed by a "no" vote on the ballot question, members of the public might understand the presentations to encourage a "yes" vote on the question. Moreover, speakers would likely be asked for their positions on Question #2, and when asked, would be hard pressed

to not "advocate" a vote in favor of the referendum. In summary, there is a reasonable possibility that the program would be used or perceived, even if unintentionally, as designed to influence the vote on a ballot question.

For the above reasons, you might want to defer consideration of the MATS application, or the implementation of the program, until after the November election. It would seem that the organization's goals of increasing seat belt awareness and use could be met at that juncture regardless of the outcome of the election, without implicating the concerns raised in Anderson.

2. Participation of Public Employees in Speakers Bureau.

The speakers bureau proposed by MATS would apparently include health and medical professionals. To the extent speakers are employed by the commonwealth or one of its subdivisions, their involvement during work hours might raise concerns under the campaign finance law, regardless of whether the speakers bureau received no direct financial support from the commonwealth.

In accordance with the Anderson decision, this office has consistently ruled that governmental entities may not use "governmental resources" to support or oppose a ballot question, and the term "governmental resources" includes personnel. See Interpretative Bulletin OCPF-IB-92-02, a copy of which is enclosed for your information. Therefore, MATS or any other organization supporting or opposing Question #2 generally can not use public employees to speak, during work hours, in support of or opposition to the ballot question.

The office has stated, however, that the Anderson case does not prohibit policy-making officials¹ from acting or speaking out in support of or opposition to a ballot question. Such activity by policy-making officials is permissible even if done by the officials in their official capacity and during work hours. Such activity must be within the scope of their official responsibilities. See OCPF-IB-92-02, page 3.² Where a speaker is not a policy-making official, the speaker's services generally may not be used during his or her work day.

In addition, the bureau and your office would be required to ensure that other governmental resources (e.g., paper, stationery, meeting rooms, copiers, or other equipment or supplies) are not used in connection with the bureau's

¹ "Policy-making officials" are defined in IB-92-02 to include constitutional officers, cabinet secretaries, commissioners, department heads, as well as other persons who have a major policy-making position at the state, county or municipal level.

² Nothing in M.G.L. c. 55 precludes a policy-making official from preparing statements relative to ballot questions on his or her own time using private funds and equipment if the official otherwise complies with the registration, reporting and other relevant requirements of the campaign finance law.

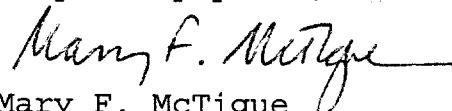
presentations, or if used, that all individuals or groups working for or against the ballot question have equal access to the same opportunity and that your office does not make expenditures to support either supporters or opponents of the ballot question. For example, this office has advised that a city may offer mailing labels to candidates if all candidates are given the same opportunity and the purchase price reflects the city's cost. See AO-88-27.

Accordingly, assuming MATS or the speakers bureau is used to advocate an affirmative vote on Question #2, the speakers bureau could use the services of public employees only if caution is exercised to ensure compliance with the Anderson decision.

This opinion has been rendered solely on the basis of representations made in your letter and telephone conversations with OCPF staff, and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,



Mary F. McTigue
Director

MFM/cp
Enclosures